

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

BERNHARDT TIEDE, II;
et al.,

Plaintiffs,

v.

BRYAN COLLIER, in his official capacity as
Executive Director of Texas Department of
Criminal Justice,

Defendant.

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Civil Action No.: 1:23-cv-01004-RP

**PLAINTIFFS' REPLY IN SUPPORT OF THEIR EMERGENCY MOTION TO
EXCLUDE TESTIMONY AND EVIDENCE PURSUANT TO RULE 37 AND TO
COMPEL 30(B)(6) DEPOSITION**

Exhibit 7

**Excerpt from Rough Transcript of Testimony of
Dr. Jane Leonardson (August 1, 2024)**

(CAUTION)

THE FOLLOWING IS A ROUGH DRAFT OF THE REQUESTED PROCEEDINGS AND, THEREFORE, MAY NOT BE UTILIZED AS A CERTIFIED RECORD FOR TEXT-CITING PURPOSES. AS SUCH, DISCREPANCIES WILL APPEAR IN THIS UNEDITED AND UN-PROOFREAD FORM. PLEASE NOTE THE PAGINATION ORDER WILL MOST LIKELY DIFFER FROM THE COMPLETED AND CERTIFIED TRANSCRIPT. THANK YOU FOR YOUR ADHERENCE TO THIS ADMONITION. August 1, 2024

THE COURT: And good morning.

MR. HOMIAK: Good morning.

THE COURT: Anything we need to cover before we begin today? Any housekeeping issues?

MS. ELLIS: No, your Honor.

THE COURT: Okay.

MR. HOMIAK: Nothing for the plaintiffs we have some exhibits to admit though. We're good, your Honor. Thank you.

THE COURT: All right.

MR. RHINES: Your Honor, I don't see her here in the courtroom today but we would like to attempt to call Ms. Jennifer tune as our first witness. She was here yesterday and the day before. She is a member of the plaintiff organization Lioness.

THE COURT: Is she here?

10:39:48 1 it all comes from medical professionals essentially?

10:39:51 2 A. That's correct.

10:39:51 3 Q. Okay. And when TDCJ becomes aware that an

10:39:56 4 individual has a heat score, what do they do?

10:39:59 5 A. They move that individual into a air conditioned bed

10:40:03 6 if they're on a facility that does not have one available

10:40:06 7 transport them to a facility that does.

10:40:08 8 Q. Okay. Were you hear yesterday when Dr. Uribe

10:40:13 9 testified?

10:40:13 10 A. Yes.

10:40:14 11 Q. Okay. Do you recall that he conceded that some of

10:40:19 12 the conditions that led to death would have happened

10:40:24 13 regardless of heat?

10:40:25 14 A. Yes.

10:40:25 15 Q. Thank you. No further questions.

10:40:30 16 THE COURT: Anything further?

10:40:34 17 MR. DUKE: No further questions.

10:40:35 18 THE COURT: Thank you, Mr. Lumpkin, you may step
10:40:39 19 down.

10:40:39 20 THE WITNESS: Thank you.

10:40:40 21 THE COURT: Your next witness.

10:40:42 22 MS. CARTER: Mr. Collier calls Dr. Jane
10:40:45 23 Leonardson to testify. She'll appear via Zoom.

10:41:48 24 THE COURT: Good morning, doctor. This is Judge

10:41:50 25 Pitman. Can you hear me okay? Good morning, doctor this

10:42:05 1 is Judge Pitman. Can you hear me?

10:42:07 2 THE WITNESS: I can. Thank you, can you hear me.

10:42:10 3 THE COURT: Yes, we can. We just ask you if you
10:42:12 4 wouldn't mind speaking as closely as you can to the
10:42:16 5 microphone and if you have any difficulty hearing anyone
10:42:20 6 on this end, if you could just let us know that would with
10:42:23 7 great.

10:42:23 8 THE WITNESS: All right. Thank you.

10:42:24 9 THE COURT: And before we begin, could I get you
10:42:26 10 to raise your right hand and be sworn, please.

10:42:29 11 THE CLERK: You do solemnly swear or affirm that
10:42:29 12 the testimony which you may give in the case now before
10:42:29 13 the Court shall be the truth, the whole truth, and nothing
10:42:37 14 but the truth?

10:42:37 15 THE WITNESS: I had a hard time hearing that.

10:42:45 16 THE CLERK: You do solemnly swear or affirm that
10:42:45 17 the testimony which you may give in the case now before
10:42:45 18 the Court shall be the truth, the whole truth, and nothing
10:42:50 19 but the truth?

10:42:50 20 THE WITNESS: Yes.

10:42:51 21 THE COURT: Thank you.

10:42:51 22 JANE LEONARDSON, called by the Defendant, duly sworn via
10:43:40 23 videoconference.

10:43:40 24 DIRECT EXAMINATION

10:43:41 25 BY MS. CARTER:

11:48:15 1 their health status?

11:48:19 2 A. Well, that's an unusual question. Everyone gets
11:48:22 3 their health status looked at and we're not asking the
11:48:27 4 provider to say does this person need a cool bed. We're
11:48:32 5 asking them to document the patient's health status
11:48:34 6 properly and treat them properly as we're all trying to do
11:48:39 7 and then those decisions result in a heat score.

11:48:46 8 Q. So the heat score isn't talking big groups of people
11:48:51 9 and assigning scores, is it?

11:48:57 10 A. Well, no. It looks at every single person who's
11:49:01 11 incarcerated and their medical record to look for new of
11:49:06 12 these criteria that gives them a point. Each and every
11:49:11 13 one. Several time times a day, thank you, Dr. Leonardson.
11:49:18 14 Nothing further right now.

11:49:22 15 MR. EDWARDS: May I inquire, your Honor this.

11:49:23 16 THE COURT: You may.

11:49:25 17 CROSS-EXAMINATION

11:49:26 18 BY MR. EDWARDS:

11:49:26 19 Q. Good morning Dr. Leonardson. My name is Jeff
11:49:32 20 Edwards. I'm a lawyer --

11:49:33 21 THE COURT: If you could get they're a
11:49:36 22 microphone.

11:49:39 23 MR. EDWARDS: Your Honor, if I could just have a
11:49:41 24 minute for my colleague to log on.

11:49:43 25 THE COURT: Sure. If you were at the podium she

11:49:47 1 could see you. That might be --

11:53:26 2 Q. (BY MR. EDWARDS) Did I understand you correctly, Dr.

11:53:30 3 Leonardson, this heat sensitivity score was designed by

11:53:37 4 TDCJ as part of a settlement agreement with some prisoner

11:53:42 5 and some lawyers?

11:53:44 6 MS. CARTER: Objection, your Honor, that

11:53:45 7 misstates her testimony.

11:53:45 8 THE COURT: He's asking her.

11:53:49 9 Q. (BY MR. EDWARDS) Did I understand you correctly,

11:53:51 10 doctor?

11:53:52 11 A. Could you say that again, please.

11:53:55 12 Q. Sure. Do I understand you correctly that the TDCJ

11:54:03 13 heat sensitivity score was designed by the Texas

11:54:06 14 department of criminal justice facing a class action

11:54:09 15 lawsuit some prisoners who were the plaintiffs in that

11:54:12 16 case and some lawyers?

11:54:16 17 A. I don't think it's accurate to say it was designed by

11:54:19 18 TDCJ. TDCJ -- there was a settlement and I honestly can't

11:54:25 19 tell you who the other side of the settlement was. TDCJ

11:54:30 20 asked us, the people that understand the electronics

11:54:36 21 health record how they could comply with the settlement

11:54:41 22 needing the information that we have to comply and asked

11:54:45 23 us for help in interpreting that settlement so that we

11:54:50 24 could get that information out of the electronic health

11:54:53 25 record, which is managed by UTMB but owned by TDCJ.

11:54:58 1 Q. Sure. They gave you categories and you used your
11:55:03 2 expertise to design a method, an algorithm, if you will,
11:55:08 3 to get that information out to give people heat scores,
11:55:13 4 right?

11:55:14 5 A. They didn't give us the categories. They handed us
11:55:18 6 the settlement.

11:55:19 7 Q. The settlement had categories in it. I thought what
11:55:23 8 was your testimony, right?

11:55:25 9 A. Right. They didn't give us the categories, they gave
11:55:29 10 us the settlement.

11:55:30 11 Q. You'd acknowledge that the TDCJ people that gave you
11:55:34 12 the categories in the settlement are not doctors, right?

11:55:39 13 A. I don't know how the settlement was arrived at.
11:55:43 14 There was a finalized settlement and it had a lot of
11:55:47 15 information about who they thought needed a cool bed and
11:55:51 16 that's what we got and TDCJ said help us to know who these
11:55:55 17 people are. I don't know how the settlement came to be.

11:56:02 18 Q. That's one of the two of us but that's neither here
11:56:05 19 nor there. TDCJ gave you the categories to use, correct?

11:56:11 20 MS. CARTER: Objection, she's already said that's
11:56:13 21 not what she said, must characteristic her testimony.

11:56:16 22 THE COURT: She can clarify if she needs to.

11:56:19 23 A. They handed us the settlement document and asked us
11:56:24 24 to help. They did to the make a list of categories and
11:56:29 25 disease and drugs and things like that and hand it to us.

11:56:32 1 Q. (BY MR. EDWARDS) The parameters for the algorithm
11:56:36 2 that wave been talking about that calm directly out of a
11:56:38 3 settlement, right, a peace of paper, a summary judgment?

11:56:42 4 A. They did.

11:56:43 5 Q. Okay. And the people that sent you that settlement,
11:56:47 6 was it Texas department of criminal justice, Mr. Collier
11:56:50 7 in particular, right?

11:56:54 8 A. You know, I don't know.

11:56:57 9 Q. Okay.

11:56:58 10 A. I'm quite certain I'd per received an e-mail from Mr.
11:57:02 11 Collier. But you know it came from someone that direction
11:57:09 12 and was handed to me to say please help us you know talk
11:57:17 13 care of.

11:57:18 14 Q. Would you agree that non doctors should be designing
11:57:21 15 systems, you know, that can protect people from dangerous
11:57:31 16 conditions, medical issues?

11:57:32 17 A. Yes.

11:57:37 18 Q. Now I have to say I'm a little confused. Not the
11:57:41 19 first time but are you telling me in no uncertain terms
11:57:51 20 that a 90 year old doesn't get a heat sensitivity score if
11:57:58 21 he's just 90 with hypertension?

11:58:07 22 A. Hyper tension plus result in target organ damage if
11:58:12 23 he has result target organ damage he or she would get a
11:58:17 24 point but without -- with just hypertension and no target
11:58:22 25 organ damage, that's correct unless the provider thought